

1 State of Arkansas
2 88th General Assembly
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4
5 By: Senator P. Malone

A Bill

SENATE BILL 345

For An Act To Be Entitled

8 AN ACT TO ESTABLISH A PRESCRIPTION DRUG MONITORING
9 PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

13 AN ACT TO ESTABLISH A PRESCRIPTION DRUG
14 MONITORING PROGRAM.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code Title 20, Chapter 7 is amended to add an
20 additional subchapter to read as follows:

21 Subchapter 6 – Prescription Drug Monitoring Program Act

23 20-7-601. Title.

24 This subchapter shall be known and may be cited as the “Prescription
25 Drug Monitoring Program Act”.

27 20-7-602. Purpose.

28 The purpose of this subchapter to protect the state health system and
29 the citizens of Arkansas by:

30 (1) Enhancing patient care by providing prescription monitoring
31 information that will ensure legitimate use of controlled substances in
32 health care, including palliative care, research, and other medical
33 pharmacological uses;

34 (2) Helping curtail the misuse and abuse of controlled
35 substances;

36 (3) Assisting in combating illegal trade in and diversion of



1 controlled substances; and

2 (4) Enabling access to prescription information by
3 practitioners, law enforcement agents, and other authorized individuals and
4 agencies and to make prescription information available to practitioners, law
5 enforcement agents, and other authorized individuals and agencies in other
6 states.

7
8 20-7-603. Definitions.

9 As used in this subchapter:

10 (1) "Controlled substance" means a drug, substance, or immediate
11 precursor in Schedules II-V;

12 (2) "Dispense" means to deliver a controlled substance to an
13 ultimate user or research subject by or pursuant to the lawful order of a
14 practitioner, including without limitation, the prescribing, administering,
15 packaging, labeling, or compounding necessary to prepare the controlled
16 substance for that delivery;

17 (3)(A) "Dispenser" means a practitioner who dispenses.

18 (B) "Dispenser" does not include:

19 (i) A licensed hospital pharmacy that distributes
20 controlled substances for the purpose of inpatient hospital care or at the
21 time of discharge from a hospital;

22 (ii) Outpatient services, except for a pharmacy
23 owned by a hospital that has a retail pharmacy permit;

24 (iii) A wholesale distributor of Schedule II-
25 Schedule V controlled substances; or

26 (iv) A practitioner or other authorized person who
27 administers a controlled substance;

28 (4) "Exchangeability" means the ability of the program to
29 electronically share reported information with another state's prescription
30 monitoring program if the information concerns the dispensing of a controlled
31 substance either:

32 (A) To a patient who resides in the other state; or

33 (B) Prescribed by a practitioner whose principal place of
34 business is located in the other state;

35 (5) "Investigation" means an active inquiry that is being
36 conducted with a reasonable, good faith belief that the inquiry:

1 (A) Could lead to the filing of administrative, civil, or
2 criminal proceedings; or

3 (B) Is ongoing and continuing and a reasonable, good
4 faith anticipation exists for securing an arrest or prosecution in the
5 foreseeable future;

6 (6) "Patient" means the person or animal who is the ultimate
7 user of a controlled substance for whom a lawful prescription is issued and
8 for whom a controlled substance is lawfully dispensed;

9 (7) "Practitioner" means:

10 (A) A physician, dentist, veterinarian, advanced practice
11 nurse, physician assistant, pharmacist, scientific investigator, or other
12 person licensed, registered, or otherwise permitted to prescribe, distribute,
13 dispense, conduct research with respect to, or to administer a controlled
14 substance in the course of professional practice or research in this state;
15 and

16 (B) A pharmacy, hospital, or other institution licensed,
17 registered, or otherwise permitted to distribute, dispense, conduct research
18 with respect to, or to administer a controlled substance in the course of
19 professional practice or research in this state;

20 (8) "Prescribe" means to issue a direction or authorization, by
21 prescription, permitting a patient lawfully to obtain a controlled substance;

22 (9) "Prescriber" means a practitioner or other authorized person
23 who prescribes a Schedule II, III, IV, or V controlled substance;

24 (10) "Prescription" means a controlled substance lawfully
25 prescribed and subsequently dispensed;

26 (11) "Prescription drug monitoring program" means a program that
27 collects, manages, analyzes, and provides information regarding Schedule II,
28 III, IV, and V controlled substance as provided under the Uniform Controlled
29 Substance Act, § 5-64-101 et seq., §§ 5-64-1101 – 5-64-1103, the Food, Drug
30 and Cosmetic Act, § 20-56-201, et seq., or §§ 20-64-501 – 20-64-513;

31 (12) "Schedule II" means controlled substances that are placed
32 in Schedule II under § 5-64-205;

33 (13) "Schedule III" means controlled substances that are placed
34 in Schedule III under § 5-64-207;

35 (14) "Schedule IV" means controlled substances that are placed
36 in Schedule IV under § 5-64-209;

1 (15) "Schedule V" means controlled substances that are placed in
2 Schedule V under § 5-64-211; and

3 (16) "Ultimate user" means a person who lawfully possesses a
4 controlled substance for:

5 (A) The person's own use;

6 (B) The use of a member of the person's household; or

7 (C) Administering to an animal owned by a person or by a
8 member of the person's household.

9
10 20-7-604. Requirements for the Prescription Drug Monitoring Program.

11 (a) The State Board of Health shall create the Prescription Drug
12 Monitoring Program upon the Department of Health procuring adequate funding
13 to establish the program.

14 (b)(1) Each dispenser shall submit to the department information
15 regarding each controlled substance dispensed.

16 (2) A dispenser located outside Arkansas and licensed and
17 registered by the Arkansas State Board of Pharmacy shall submit to the
18 department information regarding each controlled-substance prescription
19 dispensed to an ultimate user who resides within Arkansas.

20 (3) The board shall create a controlled substances database for
21 the Prescription Drug Monitoring Program.

22 (c) Each dispenser required to report under subsection (b) of this
23 section shall submit to the department by electronic means information that
24 shall include without limitation:

25 (1) The dispenser's identification number;

26 (2) The date the prescription was filled;

27 (3) The prescription number;

28 (4) Whether the prescription is new or is a refill;

29 (5) The National Drug Code number for the controlled substance
30 that is dispensed;

31 (6) The quantity of the controlled substance dispensed;

32 (7) The number of days' supply dispensed;

33 (8) The number of refills ordered;

34 (9) A patient identifier;

35 (10) The patient's name;

36 (11) The patient's address;

- 1 (12) The patient's date of birth;
- 2 (13) The patient's gender;
- 3 (14) The prescriber's identification number;
- 4 (15) The date the prescription was issued by the prescriber; and
- 5 (16) The source of the payment for the prescription.

6 (d) Practitioners are encouraged to access or check the information in
 7 the controlled substance database created under this subchapter before
 8 prescribing, dispensing, or administering medications.

9 (e) This subchapter does not prohibit licensing boards from requiring
 10 practitioners to access or check the information in the controlled substance
 11 database as a part of a review of the practitioner's professional practice.

12 (f) Each dispenser shall submit the required information in accordance
 13 with transmission methods and frequency established by the department.

14

15 20-7-605. Prescription Drug Monitoring Program Advisory Committee -
 16 Creation - Members.

17 (a) The Prescription Drug Monitoring Program Advisory Committee shall
 18 be created by the State Board of Health upon the Department of Health
 19 procuring adequate funding to establish the program.

20 (b) The mission of the advisory committee is to consult with and
 21 advise the Department of Health on matters related to the establishment,
 22 maintenance, operation, and evaluation of the prescription drug monitoring
 23 program.

24 (c) The committee shall consist of:

25 (1) One (1) representative designated by each of the following
 26 organizations:

- 27 (A) The Arkansas Academy of Physician Assistants;
- 28 (B) The Arkansas Association of Chiefs of Police;
- 29 (C) The Arkansas Drug Director;
- 30 (D) The Arkansas Medical Society;
- 31 (E) The Arkansas Nurses Association;
- 32 (F) The Arkansas Optometric Association;
- 33 (G) The Arkansas Osteopathic Medical Association;
- 34 (H) The Arkansas Pharmacists Association;
- 35 (I) The Arkansas Podiatric Medical Association;
- 36 (J) The Arkansas Prosecuting Attorneys Association;

1 (K) The Arkansas Sheriffs Association;

2 (L) The Arkansas State Dental Association;

3 (M) The Arkansas Veterinary Medical Association; and

4 (N) The State Board of Health; and

5 (2) One (1) consumer appointed by the Governor.

6
7 20-7-606. Confidentiality.

8 (a) Prescription information submitted to the Department of Health
9 under this subchapter is confidential and not subject to the Freedom of
10 Information Act of 1967, § 25-19-101 et seq.

11 (b)(1) The controlled substances database created in this subchapter
12 and all information contained in the controlled substances database and any
13 records maintained by the department or by an entity contracting with the
14 department that is submitted to, maintained, or stored as a part of the
15 controlled substances database is privileged and confidential, is not a
16 public record, and is not subject to subpoena or discovery in a civil
17 proceeding.

18 (2) Information in the controlled substances database may only
19 be used in conjunction with on-going investigations related to:

20 (A) Civil or criminal violations of state or federal law;
21 or

22 (B) Regulatory activities of licensing or regulatory
23 boards of practitioners authorized to prescribe or dispense controlled
24 substances.

25 (c) This section does not apply to information, documents, or records
26 created or maintained in the regular course of business of a pharmacy,
27 medical, dental, optometric, or veterinary practitioner, or other entity
28 covered by this subchapter, and all information, documents, or records
29 otherwise available from original sources are not immune from discovery or
30 use in a civil proceeding merely because the information contained in the
31 records was reported to the controlled substances database under this
32 subchapter.

33 (d) The department shall establish and enforce policies and procedures
34 to ensure that the privacy and confidentiality of patients are maintained and
35 that patient information collected, recorded, transmitted, and stored is
36 protected and not disclosed to persons except as listed in § 20-7-607.

1 (e) The Prescription Drug Monitoring Program shall establish and
2 maintain a process for verifying the credentials and authorizing the use of
3 prescription information by individuals and agencies listed in § 20-7-607.
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5 20-7-607. Providing prescription monitoring information.

6 (a)(1) The Department of Health may review the Prescription Drug
7 Monitoring Program Information, including without limitation a review to
8 identify information that appears to indicate whether a person may be
9 obtaining prescriptions in a manner that may represent misuse or abuse of
10 controlled substances.

11 (2) If information of misuse or abuse is identified, the
12 department may notify the practitioners and dispensers who prescribed or
13 dispensed the prescriptions.

14 (b) The department may provide information in the Prescription Drug
15 Monitoring Program upon request only to the following persons:

16 (1) A person authorized to prescribe or dispense controlled
17 substances for the purpose of providing medical or pharmaceutical care for
18 his or her patients or for reviewing information regarding prescriptions that
19 are recorded as having been issued or dispensed by the requester;

20 (2) A patient who requests his or her own prescription
21 monitoring information;

22 (3) A parent or legal guardian of a minor child who requests the
23 minor child's prescription drug monitoring program information;

24 (4)(A) A professional licensing board of the professions of the
25 healing arts pursuant to an investigation of a specific individual, entity,
26 or business licensed or permitted by that board.

27 (B) Except as permitted by subsection (a)(2) of this
28 section, the department shall provide information under subsection (b)(4)(A)
29 of this section only if the requesting board states in writing that the
30 information is necessary for an investigation;

31 (5) The State Medical Examiner as authorized by law to
32 investigate causes of deaths for cases under investigation pursuant to his or
33 her official duties and responsibilities;

34 (6) Local, state, and federal law enforcement or prosecutorial
35 officials engaged in the administration, investigation, or enforcement of the
36 laws governing controlled substances required to be submitted under this

1 subchapter pursuant to the agency's official duties and responsibilities; and

2 (7) Personnel of the department for purposes of administration
3 and enforcement of this subchapter.

4 (c) Information collected under this subchapter shall be maintained
5 for three (3) years.

6 (d) The department may provide information to public or private
7 entities for statistical, research, or educational purposes after encrypting
8 or removing the patient's name, street name and number, patient
9 identification number, month and day of birth, and prescriber information
10 that could be used to identify individual patients, persons who received
11 prescriptions from dispensers, or both.

12
13 20-7-608. Information exchange with other prescription drug monitoring
14 programs.

15 (a) The Department of Health may provide prescription monitoring
16 information to other states' prescription drug monitoring programs and the
17 information may be used by those programs consistent with this subchapter.

18 (b) The department may request and receive prescription monitoring
19 information from other states' prescription drug monitoring programs, and may
20 use the information under this subchapter.

21 (c) The department may develop the capability to transmit information
22 to other prescription drug monitoring programs and receive information from
23 other prescription drug monitoring programs employing the standards of
24 exchangeability.

25 (d) The department may enter into written agreements with other
26 states' prescription drug monitoring programs for the purpose of describing
27 the terms and conditions for sharing of prescription information under this
28 subchapter.

29
30 20-7-609. Authority to contract.

31 (a) The Department of Health may contract with another agency of this
32 state or with a private vendor, as necessary, to ensure the effective
33 operation of the Prescription Drug Monitoring Program.

34 (b) A contractor shall be bound to comply with the provisions
35 regarding confidentiality of prescription information as outlined in this
36 subchapter and shall be subject to the penalties specified in this subchapter

1 for unlawful acts.

2
3 20-7-610. Authority to seek funding.

4 (a) The Department of Health may make application for, receive, and
5 administer grant funding from public or private sources for the development,
6 implementation, or enhancement of the Prescription Drug Monitoring Program.

7 (b) A fee shall not be levied against practitioners for the purpose of
8 funding or complying with the Prescription Drug Monitoring Program.

9
10 20-7-611. Unlawful acts and penalties.

11 (a)(1) It is unlawful for a dispenser to purposely fail to submit
12 prescription monitoring information as required under this subchapter.

13 (2) A violation of subdivision (a)(1) of this section is a Class
14 B misdemeanor.

15 (b)(1) It is unlawful for a dispenser to purposely submit fraudulent
16 prescription information.

17 (2) A violation of subdivision (b)(1) of this section is a Class
18 D felony.

19 (c)(1) It is unlawful for a person authorized to receive prescription
20 monitoring information to purposely disclose the information in violation of
21 this subchapter.

22 (2) A violation of subdivision (c)(1) of this section is a Class
23 D felony.

24 (d)(1) It is unlawful for a person authorized to receive prescription
25 drug monitoring program information to use such information in a manner or
26 for a purpose in violation of this subchapter.

27 (2) A violation of subsection (d)(1) of this section is a Class
28 D felony.

29 (e)(1) It is unlawful for a person to obtain or attempt to obtain
30 information by fraud or deceit from the Prescription Drug Monitoring Program
31 or from a person authorized to receive information from the Prescription Drug
32 Monitoring Program under this subchapter.

33 (2) A violation of subdivision (e)(1) of this section is a Class
34 D felony.

35 (f) In addition to the criminal penalties provided in this section, a
36 dispenser or practitioner who uses or discloses confidential information

1 received from the Prescription Drug Monitoring Program in a manner or for a
2 purpose in violation of this subchapter may be subject to disciplinary action
3 by the dispenser's or practitioner's licensing board.

4 (g) In addition to the criminal penalties provided in this section, a
5 law enforcement officer who uses or discloses confidential information
6 received from the Prescription Drug Monitoring Program in a manner or for a
7 purpose in violation of this subchapter may be subject to disciplinary action
8 by the law enforcement officer's agency or department.

9
10 20-7-612. Rules.

11 The State Board of Health shall adopt rules to implement this
12 subchapter.

13
14 20-7-613. Effective date.

15 (a) The Prescription Drug Monitoring Program shall become operational
16 March 1, 2011 if full funding is available under § 20-7-610.

17 (b) The Director of the Department of Health may suspend operation of
18 the program if adequate funding under § 20-7-610 ceases.

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